IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

In re Tracey J. Firmin and Rebecca A. Firmin, 311 W. Drew Kirbyville, TX 75956 XXX-XX-6456 XXX-XX-7375 Debtors.	Bk. No. 17-10091 Chapter 13 OBJECTIONS TO PROPOSED AMENDED CHAPTER 13 PLAN AND CONFIRMATION THEREOF Confirmation Hearing – Date: May 4, 2017 Time: 9:30 am Place: U.S. Bankruptcy Court Beaumont, Texas

First National Acceptance Company, secured creditor in the above-entitled Bankruptcy proceeding, its assignees and/or successors in interest, holds a lien on the subject property generally described as **311 W. Drew St., Kirbyville, TX 75956,** and hereby submits the following objections to the confirmation of that certain Amended Chapter 13 Plan (the "Plan") proposed by Debtors:

IMPERMISSIBLE MODIFICATION

Debtors' proposed Plan attempts to modify Secured Creditor's original Note and Trust Deed, which is in direct violation of §1322(b)(2), which states that a Debtor may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the Debtor's principal residence". Here, the subject loan matures during the life of the Plan on November 15, 2019, at which time becoming all due and owing. Debtors' Amended Plan appears to pay a modified total claim amount of $24,187.00 at a modified interest rate of 5%

over the term of the Plan. The actual total claim amount is $27,070.92 and the contractual rate of interest is 10%. Secured Creditor requests the Plan be amended to provide for its correct total claim amount to be paid over the term of the plan at the contractual rate of interest.

FAILURE TO PROVIDE AN APPROPRIATE RATE OF INTEREST

Debtors' plan proposes to pay interest on Secured Creditor's claim at 5%. In *Till v. SCS Credit Corp.¸ Till v. SCS Credit Corp*. 541 U.S. 465; 124 S.Ct. 1951 (2004), the Supreme Court utilized the "formula approach" to determine the proper rate of interest. This approach, outside of Bankruptcy, looks to ordinary lending practices and the national prime rate, which reflects the financial market's estimate of the amount a commercial bank would charge a creditworthy commercial borrower to compensate for the loan's opportunity costs, the inflation risk, and the relatively slight default risk. The Supreme Court has decided that a bankruptcy court is then required to adjust this to account for the greater nonpayment risk that bankrupt debtors typically pose. In order to determine the appropriate risk adjustment, factors such as the estate's circumstances, the security's nature, and the reorganization Plan's duration and feasibility must be analyzed. The Courts routinely add 2% to the national prime rate to accomplish such a risk adjustment. The resulting interest rate in this case would be 5.75%. The subject Plan does not provide Objecting Secured Creditor with any appropriate interest rate based on an appropriate risk adjustment.

CONCLUSION

Any Chapter 13 Plan proposed by Debtors must provide for and eliminate the objections specified above in order to be feasible and to provide adequate protection to this objecting secured creditor. It is respectfully requested that confirmation of the Chapter 13 Plan as proposed by Debtors, be denied.

WHEREFORE, secured creditor prays as follows:

(1) That confirmation of the proposed Chapter 13 Plan be denied.

(2) For attorneys' fees and costs incurred herein.

(3) For dismissal of the Chapter 13 proceeding.

(4) For such other relief as this Court deems proper.

Dated: April 10, 2017

By /s/ James King
JAMES KING, ESQUIRE
Retained Counsel
Offerman & King, LLP
6420 Wellington Place
Beaumont, Texas 77706
(409) 860-9000
F.117-510

CERTIFICATE OF SERVICE

I certify that copies of the foregoing were sent by first class mail, or by electronic notification, on April 10, 2017 , addressed as shown below:

Tracey J. Firmin
Rebecca A. Firmin
311 W. Drew
Kirbyville, TX 75956
Debtors

Steven S. Packard
Packard LaPray
1240 Orleans Street
Beaumont, TX 77701
Debtor's Attorney

John Talton.
Plaza Tower
110 N. College Ave, 12 Floor
Tyler, TX 75702

US Trustee
Office of the U.S. Trustee
110 N. College Ave.
Suite 300
Tyler, TX 75702

/s/ James King
James King